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## Marine Insurance Prohibitions in Contemporary Economic Warfare

*Richard L. Kilpatrick, Jr.*

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## I. INTRODUCTION

Recent economic sanctions adopted by the United Nations, European Union, and the United States have focused on regulating commercial maritime activity to promote international security objectives. Targeting States for defying international norms, policymakers have restricted port access for designated vessels, banned certain cargo import and export, and authorized enhanced vessel inspections. Critically, these sanctions tactics have also included prohibitions on marine insurance coverage for vessels and cargo linked to the targeted States.<sup>1</sup>

The policy rationale driving the use of marine insurance prohibitions for sanctions purposes is that by limiting access to this integral source of risk management, designated actors find it more difficult to access maritime transport for malign purposes or to generate the trade revenue necessary to fulfill their strategic objectives. Such techniques have proved to be effective sources of economic coercion. At the same time, as these tactics have enhanced scrutiny over shipping activities, this has raised layers of challenges in the commercial maritime sphere, leaving marine insurers and others linked to the insurance industry scrambling to maintain compliance and hedge risk.

Against this backdrop, this article explores the role of marine insurance prohibitions as an instrument of economic warfare. It first offers a brief historical context, highlighting the political developments that led to their use as a geostrategic tool. It then examines recent marine insurance prohibitions employed in response to Iran and North Korea. Finally, it evaluates commercial reactions to these restrictions as shipping industry participants have politically mobilized, enhanced compliance initiatives, and attempted to shift sanctions risk in their business dealings.

## II. BACKGROUND AND THE DEVELOPMENT OF TARGETED SANCTIONS

Prohibitions on trading with the enemy have a long history that inherently intersects with commercial shipping. During the eighteenth century, English merchants were forbidden to trade or to correspond with their French counterparts during times of hostilities.<sup>2</sup> At least for a time, however, English

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1. See *infra* Part III.

2. For a more thorough historical account of insurance and warfare, see LUIS LOBO-GUERRERO, *INSURING WAR: SOVEREIGNTY, SECURITY, AND RISK* (2012); Geoffrey Clark, *Marine Insurance as an Instrument of War in the 18th Century*, 29 GENEVA PAPERS ON RISK AND

insurers continued to underwrite marine insurance for French merchant vessels and the cargo carried on them. English policymakers eventually recognized England's dominance in the marine insurance sector as a potentially powerful tool to further disrupt French commerce. Accordingly, in 1747, a bill was introduced in the English House of Commons to expressly prohibit English insurance covering French ships and cargo during wartime.<sup>3</sup>

In the debate over the bill, some members of Parliament argued that insuring French ships was a form of "high treason" that enabled French merchants to "continue their trade and commerce."<sup>4</sup> These advocates for the ban submitted that without access to reliable insurance it would be too risky for French merchants with limited capital to engage in commercial maritime voyages, bringing "immediate distress upon the whole French commerce."<sup>5</sup> Others in the House of Commons countered that English merchants received major trade benefits by insuring French property.<sup>6</sup> They raised concerns that prohibiting insurance of French interests for political purposes could destroy an English competitive advantage in the marine insurance sector and set the stage for others in Europe, including the French, to develop their own insurance markets. Solicitor General William Murray, who later became known as the admired jurist Lord Mansfield, argued that the proposed insurance ban was based on the assumption that the French would be unable to procure marine insurance elsewhere in Europe.<sup>7</sup> He cautioned that such "ill-judged regulations, or mistaken politics" could cause England to lose "the only branch of trade we now enjoy without a rival" and perhaps even transfer it to the French.<sup>8</sup> Despite these protests, the bill passed into

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INSURANCE 247 (2004); MARTIN FREDERICK, *THE HISTORY OF LLOYD'S AND OF MARINE INSURANCE IN GREAT BRITAIN: WITH APPENDIX CONTAINING STATISTICS RELATING TO MARINE INSURANCE* (Franklin Classics 2018) (1876).

3. WILLIAM CORBETT, *THE PARLIAMENTARY HISTORY OF ENGLAND: FROM THE EARLIEST TO THE YEAR 1803*, at 108 (Nabu Press 2011) (1806).

4. *Id.* at 111.

5. *Id.* at 112. A further justification supporting the insurance prohibition was based on allegations of a "pernicious practice" that some English insurers had relayed intelligence to their French clients about the movements of English warships to help them avoid being captured as prizes of war. *Id.*

6. *Id.* at 116.

7. *Id.* at 118.

8. *Id.* at 116. Attorney-General Dudley Ryder agreed, warning colorfully, "Like the dog in the fable, by snatching at the bone we fancy we see in the water, we shall lose that which we now hold in our mouth." *Id.* at 128.

law, serving as one of the early marine insurance prohibitions used explicitly for the purposes of economic warfare.<sup>9</sup>

This link between economic warfare and marine insurance later extended to the other side of the Atlantic. After the outbreak of World War I, the United States intended to maintain neutrality, but by 1917, German U-boat attacks on U.S. merchant vessels caused it to abandon this approach. In the spring of 1917, President Woodrow Wilson urged Congress to declare war on Germany, famously remarking, “The present German submarine warfare against commerce is a warfare against mankind.”<sup>10</sup> Congress followed suit, and only months after entering the war, President Wilson adopted a proclamation banning German insurance companies from providing marine insurance to U.S.-flagged vessels.<sup>11</sup> The rationale behind this prohibition was that the marine insurance business allows the insurer to gain knowledge into the movements of ships under its coverage and that “alien enemies” would relay this information to German U-boats.<sup>12</sup> Accordingly, President Wilson announced, “German insurance companies now engaged in the transaction of business in the United States . . . are hereby prohibited from continuing the transaction of the business of marine and war risk insurance either as direct insurers or re-insurers.”<sup>13</sup>

Congress responded with similar restrictions later that year, passing comprehensive economic sanctions legislation in the Trading with the Enemy Act of 1917.<sup>14</sup> This legislation prohibited U.S. businesses to trade with any

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9. *Id.* at 133. Legal historians have recently explained how licenses to trade with England’s enemies proliferated in the Napoleonic era, giving ad hoc authorization to certain merchants. The widespread use of these licenses caused the formation of a black market for “simulated papers”—false documents designed to allow maritime traders to evade restrictions. Marine insurance policies adapted by authorizing maritime voyages executed under these simulated papers. In fact, some insurers even refused to offer cover unless the assured merchants agreed to carry simulated papers on their vessels. See Su Jin Kim & James Oldham, *Insuring Maritime Trade with the Enemy in the Napoleonic Era*, 47 TEXAS INTERNATIONAL LAW JOURNAL 561, 564 (2012).

10. President Woodrow Wilson, Address to a Joint Session of the 65th Congress (Apr. 2, 1917).

11. Presidential Proclamation of July 13, 1917, 40 Stat. 1684 (1917).

12. *Id.*

13. *Id.* During both World War I and World War II, the United Kingdom instituted a form of sovereign guarantee under a war risk insurance scheme to support merchant shipping and a steady food supply. See LOBO-GUERRERO, *supra* note 2, ch. 3.

14. Trading with the Enemy Act of 1917, ch. 106, 40 Stat. 411 (codified and amended by Trading with the Enemy Act of 1917, 50 U.S.C. App. §§ 1–44 (2006)).

“enemy or ally of [an] enemy.”<sup>15</sup> The Trading with the Enemy Act also included a provision addressing insurance, stipulating that if “in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States.”<sup>16</sup> The Trading with the Enemy Act has since been utilized expansively to justify economic sanctions during times of both war and peace and has also served as a model for other economic sanctions legislation.<sup>17</sup>

At the conclusion of the two world wars, the international community took steps to avoid future hostilities by developing multilateral institutions, such as the United Nations. The UN Charter established a Security Council, which is granted authority to recommend and mandate economic sanctions in response to events that are a “threat to the peace, breach of the peace, or act of aggression.”<sup>18</sup> Under this mandate, the Security Council has the option to implement measures, including “complete or partial interruption of economic relations . . . and the severance of diplomatic relations.”<sup>19</sup> One of the Security Council’s first uses of economic sanctions related to Southern Rhodesia’s unilateral declaration of independence from the United Kingdom. Through a series of resolutions, the Council imposed a limited embargo against Southern Rhodesia, including measures designed to cut off its access to oil.<sup>20</sup> British warships aimed to prevent vessels from delivering oil to a pipeline at Portuguese-controlled Beria along the coast of present-day Mozambique by patrolling the coasts and stopping a number of oil tankers.<sup>21</sup>

But during the Cold War, multilateral sanctions were rare and difficult to execute. Political deadlock between the United States and the USSR—both permanent veto-wielding members of the Security Council—disrupted con-

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15. *Id.* § 3.

16. *Id.* § 4.

17. See Benjamin A. Coates, *The Secret Life of Statutes: A Century of Trading with the Enemy Act*, 1 MODERN AMERICAN HISTORY 151 (2018).

18. U.N. Charter art. 39.

19. *Id.* art. 41; see also M.D. Fink, *Maritime Embargo Operations: Naval Implementation of UN Sanctions at Sea under Articles 41 and 42 of the UN Charter*, 60 NETHERLANDS INTERNATIONAL LAW REVIEW 73 (2013).

20. See S.C. Res. 217 (Nov. 20, 1965); S.C. Res. 221 (Apr. 9, 1966). Oil embargos had also been proposed to impede tanker deliveries to South African ports in response to its apartheid policies. However, the Security Council never adopted these measures. See G.A. Res. 1761 (Nov. 6, 1962); see also EMBARGO: APARTHEID’S OIL SECRETS REVEALED (Richard Hengeveld & Jaap Rodenbur eds., 1995).

21. See JAMES KRASKA & RAUL PEDROZO, INTERNATIONAL MARITIME SECURITY LAW 904–07 (2013).

sensus on sensitive security issues. This political impasse instead spurred unilateral sanctions designed to promote the strategies of containment and deterrence. Perhaps most infamous among the sanctions was the U.S. trade embargo against Cuba that began after Fidel Castro's communist revolution. Concerned that Cuba would serve as a USSR proxy based only ninety miles from the U.S. coastline, the United States pressured the Castro regime by instituting a comprehensive trade embargo.<sup>22</sup> The embargo of Cuba was widely criticized around the world, including through annual resolutions in the U.N. General Assembly.<sup>23</sup>

In fact, over time, general embargoes as a sanctions tactic were viewed as being overly broad and punitive towards ordinary populations with little influence on political elites. This skepticism towards embargoes intensified after the UN-backed blockade-like maritime interdiction operation against Iraq in 1990. In attempts to pressure the Saddam Hussein regime after it had invaded Kuwait, the Security Council prohibited inward and outward trade to Iraq and Kuwait.<sup>24</sup> Enforced by the naval operation, the prohibitions over time contributed to food shortages in the region. This collateral impact contributed to the development of "smart sanctions" designed to change the behavior of certain individuals and governmental organizations with a more targeted and less punitive effect.<sup>25</sup>

The end of the Cold War fostered a more integrated sanctions policy approach. Under a string of treaties in the 1990s, including the Maastricht Treaty that formed the European Union, European States agreed to act as a bloc on certain defense and security measures. Among these measures was

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22. Some trade restrictions between the United States and Cuba remain in force today. See generally JOSE R. COT & ROLANDO ANILLO, *CUBA: A LEGAL GUIDE TO BUSINESS* (2016).

23. See, e.g., Press Release, General Assembly, Amid Demands for Ending Unilateral Coercive Measures, Speakers in General Assembly Urge United States to Repeal Embargo Against Cuba, U.N. Press Release GA/12085 (Oct. 31, 2018), <https://www.un.org/press/en/2018/ga12085.doc.htm>.

24. S.C. Res. 661 (Aug. 6, 1990); S.C. Res. 665 (Aug. 25, 1990); see also KRASKA & PEDROZO, *supra* note 21, at 912–21.

25. See Arne Tostensen & Beate Bull, *Are Smart Sanctions Feasible?*, 54 *WORLD POLITICS* 373 (2002). But see Emma Ashford, *Not-So-Smart Sanctions: The Failure of Western Restrictions Against Russia*, *FOREIGN AFFAIRS*, Jan.–Feb. 2016, at 114. Ashford argues that smart sanctions continue to create unintended consequences that harm the general population of targeted States, but largely do not affect political leaders and business elites that have already taken steps to mitigate or avoid the intended coercive effect of sanctions. *Id.* at 117. Thus, discussing the limited effect of U.S. sanctions imposed on Russia for its unlawful invasion of Crimea, she states, "At the same time that the sanctions have punished the population at large, the Kremlin has sheltered key supporters from their impact." *Id.*

the establishment of the Common Foreign and Security Policy, which granted EU agencies the authority to direct sanctions policy on a multilateral level.<sup>26</sup> The UN Security Council also became more active during this period, utilizing increasingly targeted and sophisticated sanctions techniques. Multilateral measures, including targeted restrictions on maritime assets, were employed in response to crises in Haiti, Yugoslavia, and Libya.<sup>27</sup>

The 2001 al-Qaida attacks against the United States spawned a new era of sanctions in response to the threat of non-State actors.<sup>28</sup> These tactics utilized financial services regulation, especially in the banking sector, to combat terrorism financing and money laundering. Global financial infrastructure was subject to enhanced scrutiny to ensure designated individuals and businesses were denied access to the institutions necessary to support malign activities. Blacklisted entities were prevented from accessing critical financial tools, such as the Belgium-based Society for Worldwide Interbank Financial Telecommunication (SWIFT) messaging system.<sup>29</sup> Since SWIFT holds an effective global monopoly as a trusted platform for banks to send and receive messages authorizing electronic transfers, this technique served as a particularly powerful mechanism for sanctions enforcement.

Subsequently, these sophisticated financial sanctions tactics were also implemented to address traditional security threats emanating from State actors.<sup>30</sup> With the intent to drive a precise impact and raise the cost of defying international norms, these measures have targeted political leaders, State-owned or State-operated businesses, and designated commercial transactions through sectoral sanctions.<sup>31</sup> In the search for economic pressure points, policymakers have regulated transportation infrastructure, including naming

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26. For a discussion of the Common Foreign and Security Policy, see Donato F. Navarrete & Rosa Maria F. Egea, *The Common Foreign and Security Policy of the European Union: A Historical Perspective*, 7 COLUMBIA JOURNAL OF EUROPEAN LAW 41 (2001).

27. KRASKA & PEDROZO, *supra* note 21, at 907–12.

28. *See generally* RICHARD NEPHEW, *THE ART OF SANCTIONS: A VIEW FROM THE FIELD* (2018); JUAN ZARATE, *TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* (2013).

29. *See* ZARATE, *supra* note 28, at 269–85.

30. *See generally* ROBERT D. BLACKWILL & JENNIFER M. HARRIS, *WAR BY OTHER MEANS: GEOECONOMICS AND STATECRAFT* (2016); *see also* Michael Peel & Jim Brunsten, *Swift Shows Impact of Iran Dispute on International Business*, FINANCIAL TIMES (June 5, 2018), <https://www.ft.com/content/9f082a96-63f4-11e8-90c2-9563a0613e56>; Henry Farrel, *Russia is Hinting at a New Cold War Over SWIFT. So What's SWIFT?*, WASHINGTON POST (Jan. 28, 2015), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/01/28/russia-is-hinting-at-a-new-cold-war-over-swift-so-whats-swift/>.

31. *See generally* NEPHEW, *supra* note 28.



particular vessels and shipping companies on sanctions blacklists. Recent approaches combining the focus on both financial services and maritime assets harken back to the centuries-old technique of banning marine insurance coverage over vessels and cargo with a nexus to sanctioned States.

### III. INSURANCE PROHIBITIONS AS A TWENTY-FIRST CENTURY SANCTIONS TECHNIQUE

There are a number of reasons why marine insurance prohibitions remain an effective tool to promote geostrategic outcomes. Insurance is a fundamental component of international business transactions effectuated by maritime infrastructure to spread the risk of maritime casualties and to maintain compliance with various international rules and regulations. By restricting access to this vital source of risk management, targeted actors find it difficult to engage in nefarious maritime activity or legitimate revenue-producing trade.

To fully understand this sweeping impact, it is first helpful to recall the basic structure of the marine insurance industry. While technological advances have improved navigation and maritime safety, ocean voyages remain risky business. Ship owners and other entities with an interest in the maritime voyage must procure insurance covering different parts of the risk. Consequently, there are several distinct types of insurance relevant to commercial maritime voyages, including coverage for hull and machinery, cargo, protection and indemnity, and other risks.

Hull and machinery coverage is designed to insure risks to the vessel itself. Modern commercial vessels are larger and more valuable than ever before—they can easily be worth tens of millions of dollars. These vessels are often mortgaged, and the entities that finance the purchase or construction of the vessels may require ship owners to maintain highly rated hull and machinery insurance covering the vessel and its equipment.<sup>32</sup> Likewise, the cargo carried on these vessels is often highly valuable. Modern container vessels can move up to twenty thousand multimodal containers, bulk carriers may hold hundreds of thousands of tons of commodities, and supertankers may store up to two million barrels of oil.<sup>33</sup> Such high-value cargo drives the

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32. See Ivan Vella, *Ship Management and Finance*, in THE IMLI MANUAL ON INTERNATIONAL MARITIME LAW: VOLUME II: SHIPPING LAW 105, 139 (Malgosia Fitzmaurice, Norman Martinez, Ignacio Arroyo & Elda Belja eds., 2016).

33. See *Top 10 World's Largest Container Ships in 2019*, MARINE INSIGHT, <https://www.marineinsight.com/know-more/top-10-worlds-largest-container-ships-in-2019/> (last updated Feb. 25, 2019).

need for substantial cargo coverage and when the value is high enough, insurers may seek reinsurance to cover their own risks as well.

Commercial maritime voyages also carry risks to third parties, including the possibility of collision, personal injury, marine pollution, and other open-ended liabilities. Since these risks are indeterminate, historically, it was more difficult to find insurers willing to underwrite these special risks at a reasonable premium. As for collision risk, underwriters at Lloyd's were only willing to insure three-fourths of the risk, requiring the shipowner to cover the remaining one-fourth.<sup>34</sup> This contributed to the development of ship-owner organizations known as protection and indemnity clubs (P&I clubs) where members annually contribute a "call" to a risk pool. Club members can then make withdrawals from the pool to cover liabilities in accordance with the P&I club rules. For risks excluded from P&I cover, other more specialized products are also available, such as war risk and trade disruption insurance.

Modern marine insurance is more than a tool of risk management; underlying contracts of carriage and regulations issued at the international, regional, and domestic levels may require it. Charter party contracts made between ship owners and charterers regularly require the ship owner to maintain adequate insurance for the vessel.<sup>35</sup> International treaties such as the International Convention on Civil Liability for Bunker Oil Pollution Damage require ship owners to maintain liability insurance that will allow third parties injured by bunker oil maritime pollution to make claims directly against the insurer.<sup>36</sup> Flag-State administrators, vessel safety classification societies, and port authorities may also impose insurance obligations on vessel operators.

The vast majority of the marine insurance and reinsurance market is based in Western nations, much of it through the syndicates at Lloyd's of London. This concentration creates limited access for marine insurance, which makes insurance prohibitions especially useful for economic sanctions purposes.<sup>37</sup> Similar to the way that the SWIFT bank messaging system has been utilized to restrict designated individuals and banks from access to the global financial system, barring access to Lloyd's of London and other

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34. See generally STEVEN HAZELWOOD, *P&I CLUBS: LAW AND PRACTICE* (4d ed. 2010).

35. See, e.g., New York Produce Exchange Time Charter 2015 cl. 6 (Oct. 15, 2015).

36. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, Mar. 23, 2001.

37. See Clare Baldwin & Osamu Tsukimori, *Analysis: Marine Insurance: The Stranglehold on Iran?*, REUTERS, Apr. 17, 2012, <https://www.reuters.com/article/us-iran-oil-insurance/analysis-marine-insurance-the-stranglehold-on-iran-idUSBRE83G0BX20120417>.

trusted insurance markets can have a similarly broad effect.<sup>38</sup> Such bans may prevent targeted actors from procuring the insurance necessary to engage in maritime transport for malign purposes or to generate the revenue necessary for their illicit activities through legitimate trade.

However, the transnational complexion of modern shipping practice creates unique challenges for insurance prohibitions as a sanctions tool. Commercial vessels are often flagged with open-registries—flags of convenience—rather than with the nation with the closest nexus to the underlying shipping interests.<sup>39</sup> This practice emerged in earnest in the second half of the twentieth century to avoid costs and oversight.<sup>40</sup> Consequently, since a sanctioned State may benefit from trade conducted on foreign-flagged vessels, a prohibition focusing only on that State's domestically-flagged vessels may not provide the intended effect. Furthermore, shipping companies may utilize shell companies and business aliases, and may periodically re-register and re-name their enterprises to circumvent regulation.<sup>41</sup> These evasive tactics cause targeted insurance prohibitions for sanctions purposes to have short-lived impact unless policymakers regularly adapt and update them.<sup>42</sup> Despite these challenges, the international community has recently attempted to utilize marine insurance prohibitions to address security concerns emanating from Iran, North Korea, and elsewhere.

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38. See ZARATE, *supra* note 28, at 304–06; see generally *supra* Part II.

39. For instance, the relatively small States of Panama, the Marshall Islands, and Liberia are currently the three most popular flag States in the world. See *Top 10 Flag States 2018*, LLOYD'S LIST: MARITIME INTELLIGENCE (Dec. 10, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1125024/Top-10-flag-states-2018>.

40. See H. Edwin Anderson, III, *The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives*, 21 TULANE MARITIME LAW JOURNAL 139 (1996).

41. See Jo Becker, *Web of Shell Companies Veils Trade by Iran's Ships*, NEW YORK TIMES (June 7, 2010), <https://www.nytimes.com/2010/06/08/world/middleeast/08sanctions.html>; Anastassios Adamopoulos, *IMO Confronts Fraudulent Vessel Registrations*, LLOYD'S LIST: MARITIME INTELLIGENCE (Mar. 13, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126602/IMO-confronts-fraudulent-vessel-registrations>; Michelle Wiese Bockmann, *Iran Oil Exports on the Rise as National Tanker Fleet Reflags*, LLOYD'S LIST: MARITIME INTELLIGENCE (Mar. 21, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126731/Iran-oil-exports-on-the-rise-as-national-tanker-fleet-reflags>.

42. See generally BRYAN R. EARLY, *BUSTED SANCTIONS: EXPLAINING WHY ECONOMIC SANCTIONS FAIL* (2015).

*A. Marine Insurance Prohibitions and Iran*

The first time the U.N. Security Council invoked an insurance prohibition for sanctions purposes was in response to Iran's nuclear ambitions.<sup>43</sup> These measures were in the works for many years.<sup>44</sup> Even before its Islamic Revolution, Iran pursued nuclear technology with some aid from Western nations. Relations soured in 1979 after Iranian protesters seized the U.S. embassy in Tehran. The United States classified Iran as a State Sponsor of Terrorism in 1984,<sup>45</sup> and in the following decades, it imposed a series of sanctions against the country. Nevertheless, for much of this period, Iran continued trading with the rest of the world. In fact, as a founding member of the Organization of Petroleum Exporting Countries, Iran has consistently been among the most prolific oil exporters in the world and a critical source of energy for European markets.

The international concern over Iran's nuclear aspirations increased in 2002 when Iran publicly announced progress in building nuclear reactors. The International Atomic Energy Agency (IAEA), the UN agency responsible for nuclear nonproliferation, called for the suspension of nuclear enrichment activities and inspections of Iran's nuclear sites.<sup>46</sup> However, Iran refused to cooperate. After years of unsuccessful political engagement on the issue, in 2006 the IAEA referred the issue to the Security Council.

In July 2006, Iran announced that for the first time, it had enriched uranium. The Security Council responded with Resolution 1696, which called for Iran to suspend its enrichment activities.<sup>47</sup> Diplomatic negotiations were held between Iran and the five permanent members of the Security Council (China, France, Russia, United Kingdom, and United States), along with

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43. See S.C. Res. 1929 (June 9, 2010); S.C. Res. 1803 (Mar. 3, 2008). Resolution 1803 also references insurance when calling on States to "exercise vigilance in entering into new commitments for public provided financial support for trade with Iran, including the granting of export credits, guarantees or insurance, to their nationals of entities involved in such trade." *Id.* ¶ 9.

44. See generally *Timeline of Nuclear Diplomacy with Iran*, ARMS CONTROL ASSOCIATION, <https://www.armscontrol.org/factsheet/Timeline-of-Nuclear-Diplomacy-With-Iran> (updated by Alicia Sanders-Zakre) (last visited Aug. 29, 2019).

45. U.S. DEPARTMENT OF STATE, STATE SPONSORS OF TERRORISM, <https://www.state.gov/state-sponsors-of-terrorism/> (last visited Aug. 29, 2019).

46. See *IAEA and Iran: Chronology of Events*, INTERNATIONAL ATOMIC ENERGY ASSOCIATION (IAEA), <https://www.iaea.org/newscenter/focus/iran/chronology-of-key-events> (last visited Aug. 29, 2019).

47. S.C. Res. 1696 (July 31, 2006).

Germany and EU representatives—known collectively as the P5+1. These negotiations did not resolve this issue, and the Security Council issued additional resolutions banning the transfer of nuclear technology to Iran, while freezing assets of individuals and businesses thought to be involved in Iran’s nuclear program.<sup>48</sup> In 2009, Iran carried out provocative missile tests, which led to further condemnation. In response, in 2010, the Security Council issued its most comprehensive sanctions against Iran in Resolution 1929.<sup>49</sup>

Resolution 1929 banned the supply of enrichment-related technology to Iran and called on all States to inspect and seize vessels reasonably believed to be involved in these prohibited activities. The Resolution also limited the provision of vessel bunkering services and other fuel supplies to “Iranian-owned or -contracted vessels, including chartered vessels” believed to be involved in prohibited transactions.<sup>50</sup> Further, the Resolution also called on States to “[p]revent the provision of financial services, including insurance or re-insurance” when there are “reasonable grounds to believe” these services could contribute to Iran’s weapons programs.<sup>51</sup>

The Security Council specifically designated the Iranian national carrier Islamic Republic of Iran Shipping Lines (IRISL) and its affiliates as subject to these restrictions on marine insurance. As early as 2008, the United States and the United Kingdom had identified IRISL as a contributor to Iran’s nuclear programs and blacklisted its fleet of over one hundred vessels.<sup>52</sup> A U.K. Treasury Order issued in 2009 banned all persons operating in the U.K. financial sector from transacting any business with IRISL.<sup>53</sup> This effectively

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48. S.C. Res. 1737 (Dec. 23, 2006); S.C. Res. 1747 (Mar. 24, 2007); S.C. Res. 1803 (Mar. 3, 2008).

49. S.C. Res. 1929 (June 9, 2010).

50. *Id.* ¶ 18.

51. *Id.*

52. See Press Release, U.S. Department of the Treasury, Major Iranian Shipping Company Designated for Proliferation Activity (Sept. 10, 2008), <https://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx>; see also ZARATE, *supra* note 28, at 304–06. Going beyond what the Security Council has required, the U.S. sanctions on Iran have been particularly broad and sweeping. These sanctions include a number of legislative measures, including the Iran Sanctions Act of 1996, the Comprehensive Iran Sanctions and Accountability and Divestment Act of 2010, the Iran Freedom and Counter-Proliferation Act of 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012, as well as various executive orders and others regulations.

53. See The Financial Restrictions (Iran) Order 2009, SI 2009/2725, art. 3, ¶ 1(b) (Eng.). The United States undertook similar efforts and also designated front companies and individuals attempting to help the IRISL bypass these financial restrictions. See *Treasury Exposes Continued Efforts by Iran to Avoid Sanctions Against its Shipping Line*, IRANWATCH (Oct. 27, 2010),

barred IRISL's access to Lloyd's of London and the U.K.-based members of the International Group of P&I Clubs, which had a considerable impact on IRISL's ability to maintain adequate insurance and engage in maritime trade.

During this period, the European Union issued its own sanctions against Iran. These measures also designated IRISL entities and affiliates as subject to sanctions, including the National Iranian Tanker Company (NITC).<sup>54</sup> By 2012, the European Union enhanced these measures to ban all oil and petrochemical imports from Iran.<sup>55</sup> Among these measures were provisions prohibiting insurance coverage for tankers carrying such cargos. Article 11 of EU Council Regulation 267/2012 states, "It shall be prohibited . . . to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran."<sup>56</sup> Article 35 of the same regulation goes further by banning the provision of insurance to "Iran or its Government, and its public bodies, corporations and agencies."<sup>57</sup>

Taken together, these sanctions generated a considerable negative impact on Iran's economy.<sup>58</sup> Between 2011 and 2013, Iran's oil exports dropped, and the value of the Iranian rial fell substantially.<sup>59</sup> In turn, this economic pressure allowed for leveraged diplomatic negotiations between

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<https://www.iranwatch.org/library/government/united-states/executive-branch/departments-treasury/treasury-exposes-continued-efforts-iran-avoid-sanctions-against-its-ship-ping>.

54. See, e.g., Council Regulation 961/2010, 2010 O.J. (L 281) (EU); Implementing Regulation 668/2010, 2010 O.J. (L 195/25) (EC); Council Decision 2010/427/EU, 2010 O.J. (L 201/30) (EU).

55. Jerry A. DiColo, *EU Embargo on Iran Oil Takes Effect*, WALL STREET JOURNAL (July 1, 2012), <https://www.wsj.com/articles/SB10001424052702303649504577496463851879258>.

56. Council Regulation 267/2012, art. 11(1)(d), 2012 O.J. (L 88) (EU). Article 13 similarly bans insurance coverage for vessels carrying petrochemicals. *Id.* art. 13.

57. *Id.* art. 35.

58. See, e.g., Javier Blas, *Insurance Ban Hits Iranian Oil Sales*, FINANCIAL TIMES (June 18, 2012), <https://www.ft.com/content/662d2994-b95d-11e1-a470-00144feabdc0>.

59. Farnaz Fassihi & John M. Biers, *EU Bans Imports of Iran's Oil, Raising Pressure on Tehran*, WALL STREET JOURNAL (Jan. 24, 2012), <https://www.wsj.com/articles/SB10001424052970203718504577178231285985826>; Myles Neligan & Jonathan Saul, *EU's Iran Oil Ban Weighs on Ship Insurance Market*, REUTERS, Jan. 31, 2012, <https://www.reuters.com/article/insurance-iran/eus-iran-oil-ban-weighs-on-ship-insurance-market-idUSL5E8CU3TN20120131>; Thomas Erdbrink, *Iran Staggers as Sanctions Hit Economy*, NEW YORK TIMES (Sept. 30, 2013), <https://www.nytimes.com/2013/10/01/world/middleeast/iran-staggers-as-sanctions-hit-economy.html>.

Iran and the P5+1.<sup>60</sup> Through these negotiations, Iran eventually agreed to submit to international inspections of its nuclear program in exchange for sanctions relief. This agreement was memorialized in the 2015 Joint Comprehensive Plan of Action (JCPOA).<sup>61</sup> The JCPOA required Iran to cease uranium enrichment activities, dismantle and store nuclear equipment, and allow scheduled monitoring and verification by the IAEA. In return, the UN and EU sanctions targeting Iran's nuclear program would be terminated. The United States also agreed to roll back the sanctions it had imposed based on the nuclear program and agreed to grant a general license for foreign entities to engage in commercial activity with Iran.<sup>62</sup> However, the United States continued to restrict U.S. businesses from engaging with Iran on commercial matters based on independent foreign policy grounds, including Iran's State Support of Terrorism designation, its destabilizing influence in the Middle East, and widespread human rights abuses.<sup>63</sup>

The Security Council endorsed the JCPOA in Resolution 2231.<sup>64</sup> Subsequently, the IAEA issued reports verifying Iran's compliance with the JCPOA.<sup>65</sup> As agreed, the United Nations and the European Union lifted the nuclear-related sanctions.<sup>66</sup> Under the Obama administration, the United States issued waivers and licenses that included a number of P&I clubs and

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60. See generally NEPHEW, *supra* note 28, ch. 7.

61. Joint Comprehensive Plan of Action, July 14, 2015, <http://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf>.

62. See U.S. DEP'T OF TREASURY & U.S. DEP'T OF STATE, GUIDANCE RELATING TO THE LIFTING OF CERTAIN U.S. SANCTIONS PURSUANT TO THE JOINT COMPREHENSIVE PLAN OF ACTION IMPLEMENTATION DAY (2016), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement\\_guide\\_jcpoa.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement_guide_jcpoa.pdf); see also KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 10 n.12 (2019) (compiling a list of marine insurers that received these licenses, as of July 12, 2019).

63. See generally Sahand Moarefy, *Partially Unwinding Sanctions: The Problematic Construct of Sanctions Relief in the JCPOA*, HARVARD LAW SCHOOL NATIONAL SECURITY JOURNAL (July 15, 2016), <http://harvardnsj.org/2016/07/partially-unwinding-sanctions-the-problematic-construct-of-sanctions-relief-in-the-jcpoa/>.

64. S.C. Res. 2231 (July 20, 2015).

65. Note by the President of the Security Council, Enclosure, Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015), U.N. Doc. S/2016/57 (Jan. 19, 2016).

66. See Report of the Secretary-General on the Implementation of Security Council Resolution 2231 (2015), U.N. Doc. S/2016/589 (July 12, 2016); Information Note on EU Sanctions to Be Lifted Under the Joint Comprehensive Plan of Action (JCPOA) (January 23, 2016), [http://eeas.europa.eu/archives/docs/top\\_stories/pdf/iran\\_implementation/information\\_note\\_eu\\_sanctions\\_jcpoa\\_en.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/iran_implementation/information_note_eu_sanctions_jcpoa_en.pdf).

other marine insurers.<sup>67</sup> Businesses in various sectors, including the maritime industry, expressed optimism about the opportunity to enter the Iran market. Major European shipping companies announced they would begin limited service to Iran, while also remaining cautious of the fragile geopolitical situation.<sup>68</sup> Previously blacklisted national Iranian carriers, including IRISL, began limited trading to European ports.<sup>69</sup> Marine insurance companies again expressed interest in providing coverage to vessels with an Iranian nexus.<sup>70</sup>

The November 2016 election of Donald Trump as president of the United States quickly altered this sense of optimism because he had harshly criticized the JCPOA during his election campaign.<sup>71</sup> During his first eighteen months in office, President Trump continued to grant waivers as the Obama administration had done, although he repeatedly threatened to withdraw from the JCPOA.<sup>72</sup> In May 2018, President Trump finally announced that the United States would end its participation in the JCPOA.<sup>73</sup> Shortly after this announcement, the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) issued guidance explaining that there would

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67. See, e.g., Iran Transactions and Sanctions Regulations, General License H Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person, 31 C.F.R. pt. 560 (Jan. 16, 2016), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran\\_glh.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf); see also Katzman, *supra* note 62, at 10 n.12.

68. Jonathan Saul, *Container Shipping Lines Returning to Iran Tread Cautiously*, REUTERS, Jan. 7, 2016, <https://www.reuters.com/article/iran-shipping-idUSL8N14R1QD20160107>.

69. See Wei Zhe Tan, *IRISL Ship Calls at Antwerp for First Time Since Sanctions Were Lifted*, LLOYD'S LIST: MARITIME INTELLIGENCE (Mar. 28, 2016), <https://lloydslist.maritimeintelligence.informa.com/LL021531/IRISL-ship-calls-at-Antwerp-for-first-time-since-sanctions-were-lifted>; Rick Gladstone, *Embargo Lifted, Iranian Oil Reaches Europe*, NEW YORK TIMES (Mar. 7, 2016), <https://www.nytimes.com/2016/03/08/world/middleeast/embargo-lifted-iranian-oil-reaches-europe.html>.

70. David Osler, *P&I Clubs Confirm Tehran Visits Following End of Iran Sanctions*, LLOYD'S LIST: MARITIME INTELLIGENCE (Jan. 19, 2016), <https://lloydslist.maritimeintelligence.informa.com/LL019310/PampI-clubs-confirm-Tehran-visits-following-end-of-Iran-sanctions>; Bernardo Vizcaino & Carolyn Cohn, *Global Insurers Plot Cautious Course to Iran*, REUTERS, Jan. 24, 2016, <https://www.reuters.com/article/us-iran-nuclear-insurance-idUSKCN0V208G>.

71. *Trump Campaign Criticizes Iran Nuclear Deal Anew after Reuters Report*, REUTERS, Sept. 1, 2016, <https://www.reuters.com/article/us-usa-election-trump-iran-idUSKCN1175YH>.

72. See Mark Landler & David E. Sanger, *Trump Disavows Nuclear Deal, but Doesn't Scrap It*, NEW YORK TIMES, (Oct. 13, 2017), <https://www.nytimes.com/2017/10/13/us/politics/trump-iran-nuclear-deal.html>.

73. Mark Landler, *Trump Abandons Nuclear Deal He Long Scorned*, NEW YORK TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html>.



be a limited wind-down period before sanctions snap-back. The guidance included a deadline of November 5, 2018 for the provision of underwriting services, insurance, and reinsurance.<sup>74</sup>

Attempting to preserve the JCPOA, the European Union implemented countermeasures designed to limit the extraterritorial impact of the U.S. sanctions.<sup>75</sup> The European Commission updated a decades-old “Blocking Regulation” designed to prevent European businesses from complying with enumerated U.S. sanctions.<sup>76</sup> France, Germany, and the United Kingdom also worked with Iran to establish a “special purpose vehicle” designed to facilitate transactions bypassing the U.S. banking system through a kind of bartering system called the Instrument in Support of Trade Exchanges (INSTEX).<sup>77</sup> The disharmony between U.S. sanctions and European countermeasures introduced considerable uncertainty into the maritime industry, particularly the marine insurance markets.<sup>78</sup>

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74. OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF TREASURY, FREQUENTLY ASKED QUESTIONS REGARDING EXECUTIVE ORDER OF AUGUST 6, 2018, “REIMPOSING CERTAIN SANCTIONS WITH RESPECT TO IRAN” (2018), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_iran.aspx#eo\\_reimposing](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#eo_reimposing).

75. See Patrick Wintour & Daniel Boffey, *EU Sets Course for US Clash with Law Blocking Iran Sanctions*, GUARDIAN (London) (May 17, 2018), <https://www.theguardian.com/world/2018/may/17/maersk-tankers-pull-out-of-iran-in-blow-to-nuclear-deal>; see also Press Release, U.K. Foreign and Commonwealth Office, Joint Statement on the Re-Imposition of U.S. Sanctions on Iran (Aug. 6, 2018), <https://www.gov.uk/government/news/joint-statement-on-the-re-imposition-of-us-sanctions-on-iran>.

76. Council Regulation 2271/96, 1996 O.J. (L 309) (EC); Commission Delegated Regulation (EU) 2018/1100, art. 5, 2018 O.J. (L 199/1) (EU) (requiring EU persons subject to the Regulation to “comply . . . with any requirement or prohibition, including requests from foreign courts” relating to the enumerated U.S. sanctions legislation reflected in its Annex).

77. See Steven Erlanger, *3 European Nations Create Firm to Trade with Iran, but Will Anyone Use It?*, NEW YORK TIMES (Jan. 31, 2019), <https://www.nytimes.com/2019/01/31/world/europe/europe-trade-iran-nuclear-deal.html>.

78. *International Group Circular: Iran Sanctions Update*, THE SHIPOWNERS' CLUB (May 29, 2018), <https://www.shipownersclub.com/international-group-circular-iran-sanctions-update/>; see also *Re-Imposition of U.S. Secondary Sanctions Targeting Iran*, IGP&I: INTERNATIONAL GROUP OF P&I CLUBS (Nov. 26, 2018), <https://www.igpandi.org/article/re-imposition-us-secondary-sanctions-targeting-iran-may-2018>.

*B. Marine Insurance Prohibitions and North Korea*

Similar insurance prohibitions have been used against North Korea. As with Iran, the historical background leading up to these sanctions is complex.<sup>79</sup> After the Korean War's active hostilities concluded with an armistice in 1953, the Korean peninsula remained divided in two halves with a demilitarized zone along the 38th parallel separating the Soviet-backed North from the U.S.-backed South.<sup>80</sup> While the two sides technically remain at war because a peace treaty has never been agreed upon, there has been relative peace during the post-war period.<sup>81</sup> Since the 1953 armistice, South Korea has thrived economically and become one of the most prosperous nations in the region.<sup>82</sup> In contrast, North Korea has remained politically isolated and underdeveloped, with limited trade integration with the rest of the world.<sup>83</sup>

During the 1990s, North Korea began to enrich plutonium in apparent pursuit of nuclear weapons. The Security Council threatened sanctions until North Korea agreed to IAEA inspections. North Korea did not fully cooperate with the inspections and withdrew from the IAEA in 1994.<sup>84</sup> Following the death of North Korea's founder Kim Il Sung, his son Kim Jong Il became the supreme leader in 1994. Under his leadership, North Korea regularly engaged in provocative weapons testing. In 2002, U.S. President George W. Bush famously branded North Korea part of an "axis of evil" and drew attention to its pursuit of weapons of mass destruction.<sup>85</sup> By 2003, North

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79. See *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, ARMS CONTROL ASSOCIATION, <https://www.armscontrol.org/factsheets/dprkchron> (updated by Alicia Sanders-Zakre) (last updated July 2019); see also *North Korea and the Bomb: The Origins of the Current Crisis and What's Next*, FOREIGN AFFAIRS (Sept. 15, 2017); <https://www.foreignaffairs.com/anthologies/2017-09-15/north-korea-and-bomb>. For a broader overview of U.S.-North Korean relations, see PATRICK MCEACHERN, *NORTH KOREA: WHAT EVERYONE NEEDS TO KNOW* (2019).

80. MCEACHERN, *supra* note 79, at 22–24.

81. *Id.*

82. *Id.* at 151–61.

83. *Id.*; see also Motoko Rich, Choe Sang-Hun, Audrey Carlsen & Megan Specia, *How South Korea Left the North Behind*, NEW YORK TIMES (Feb. 6, 2018), <https://www.nytimes.com/interactive/2018/02/06/world/asia/korea-history.html>.

84. For a comprehensive timeline, see *IAEA and DPRK: Chronology of Key Events*, IAEA: INTERNATIONAL ATOMIC ENERGY AGENCY, <https://www.iaea.org/newscenter/focus/dprk/chronology-of-key-events> (last visited Aug. 29, 2019).

85. President George W. Bush, State of the Union Address to a Joint Session of the 107th Congress (Jan. 29, 2002).

Korea had announced it was withdrawing from the Nuclear Nonproliferation Treaty (NPT).<sup>86</sup> In response, the United States imposed unilateral sanctions on North Korean companies and individuals.<sup>87</sup>

Following the North Korean announcement and the imposition of U.S. sanctions, the “Six-Party Talks” consisting of North Korea, South Korea, Japan, the United States, China, and Russia attempted to find a peaceful resolution to this issue.<sup>88</sup> In 2005, North Korea agreed to abandon its nuclear program and committed to returning to the IAEA and NPT, but quickly changed course and engaged in a series of missile tests, again drawing international condemnation. These tests initiated a string of Security Council resolutions between 2006 and 2009, leading to an arms embargo and financial sanctions on entities suspected of participating in weapons development.<sup>89</sup>

Following the death of Kim Jong Il, his son Kim Jong Un assumed power in 2011. Under Kim Jong Un’s leadership, North Korea continued missile tests between 2012 and 2015.<sup>90</sup> In response, the Security Council and the United States sought to increase sanctions pressure by targeting individuals, financial institutions, and shipping companies believed to be supporting these illicit activities. Under Resolution 2094 (2013), the Security Council mandated that “Member States shall not provide public financial support for trade with the DPRK [Democratic People’s Republic of Korea] (including granting of export credits, guarantees, or insurance to their national or entities involved in such trade)” if the support would contribute to North Korea’s weapons programs.<sup>91</sup>

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86. *N. Korea Withdraws from Nuclear Pact*, BBC (Jan. 10, 2003), <http://news.bbc.co.uk/2/hi/asia-pacific/2644593.stm>.

87. See Jayshree Bajoria & Beina Xu, *The Six Party Talks on North Korea’s Nuclear Program*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounder/six-party-talks-north-koreas-nuclear-program> (last updated Sept. 13, 2013).

88. See *The Six-Party Talks at a Glance*, ARMS CONTROL ASSOCIATION, <https://www.armscontrol.org/factsheets/6partytalks> (research by Xiaodon Liang) (last updated June 2018).

89. S.C. Res. 1695 (July 15, 2006); S.C. Res. 1718 (Oct. 14, 2006); S.C. Res. 1874 (June 12, 2009).

90. See *Chronology of U.S.-North Korean Nuclear and Missile Diplomacy*, *supra* note 79; see also Jeffrey Lewis, *Kim Jong Un’s Quest for an ICBM: The State of North Korea’s Missile Program*, FOREIGN AFFAIRS (June 9, 2017), <https://www.foreignaffairs.com/articles/north-korea/2017-06-09/kim-jong-uns-quest-icbm>.

91. S.C. Res. 2094, ¶ 15 (Mar. 7, 2013).

In 2016, North Korea announced that it had tested a hydrogen bomb for the first time.<sup>92</sup> The Security Council responded with Resolution 2270, which further enhanced sanctions by requiring Member States to inspect vessels transiting to and from North Korea.<sup>93</sup> Borrowing the insurance ban tactic used against Iran in 2010, Resolution 2270 requires Member States to

[p]rohibit their nationals, persons subject to their jurisdiction and entities incorporated in their territory or subject to their jurisdiction from registering vessels in the DPRK, obtaining authorization for a vessel to use the DPRK flag, and from owning, leasing, operating, providing any vessel classification, certification or associated service, or insuring any vessel flagged by the DPRK.<sup>94</sup>

Subsequently, Resolution 2321 clarified that Member States are also required to prohibit “insurance or re-insurance services to vessels owned, controlled, or operated, including through illicit means, by the DPRK.”<sup>95</sup> This extended the previous prohibition on banning insurance only to North Korean-flagged vessels.

In 2017, the United States and South Korea deployed a Terminal High-Altitude Area Defense (THAAD) system designed to intercept North Korean missiles.<sup>96</sup> That year, North Korea engaged in some of its most belligerent behavior, including firing an intercontinental ballistic missile that was capable of reaching the U.S. mainland over Japan.<sup>97</sup> This provocation led to an ominous public exchange between Kim Jong Un and President Trump. Chairman Kim threatened to attack Guam, and President Trump remarked

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92. David E. Sanger & Choe Sang-Hun, *North Korea Says It Has Detonated Its First Hydrogen Bomb*, NEW YORK TIMES (January 5, 2016), <https://www.nytimes.com/2016/01/06/world/asia/north-korea-hydrogen-bomb-test.html>; see also Van Jackson, *Preventing Nuclear War with North Korea: What to Do After the Test*, FOREIGN AFFAIRS (Sept. 11, 2016), <https://www.foreignaffairs.com/articles/north-korea/2016-09-11/preventing-nuclear-war-north-korea>.

93. S.C. Res. 2270 (Mar. 2, 2016).

94. *Id.* ¶ 20.

95. S.C. Res. 2321, ¶ 22 (Nov. 30, 2016).

96. Gerry Mullany & Michael R. Gordon, *U.S. Starts Deploying Thaad Antimissile System in South Korea, After North's Tests*, NEW YORK TIMES (Mar. 6, 2017), <https://www.nytimes.com/2017/03/06/world/asia/north-korea-thaad-missile-defense-us-china.html>.

97. Choe Sang-Hun & David E. Sanger, *North Korea Fires Missile Over Japan*, NEW YORK TIMES (Aug. 28, 2017), <https://www.nytimes.com/2017/08/28/world/asia/north-korea-missile.html>.

to the UN General Assembly that the United States could be forced to “totally destroy North Korea.”<sup>98</sup>

The Security Council then passed Resolution 2371, which banned a variety of North Korean exports, including coal, iron, and seafood.<sup>99</sup> After additional missile tests, the Security Council passed Resolutions 2375 and 2397, which banned North Korea from importing steel and aluminum and placed quotas on imports of oil, natural gas, and other fuel.<sup>100</sup> Resolution 2397 also expanded the scope of the insurance ban through the following provision:

Each Member State shall prohibit its nationals, persons subject to its jurisdiction and entities incorporated in its territory or subject to its jurisdiction from providing insurance or re-insurance services to vessels it has reasonable grounds to believe were involved in activities, or the transport of items prohibited by [previous Security Council resolutions].<sup>101</sup>

The United States, the European Union, and other jurisdictions implemented these resolutions, sometimes going beyond what was mandated by the Security Council. For instance, U.S. Executive Order 13,810 mandates that no vessel that has visited North Korea or engaged in a ship-to-ship transfer designed to circumvent sanctions may call at a port in the United States within the following 180 days.<sup>102</sup>

Despite the intensity of this political rhetoric and the broad scope of these security measures, tempers eventually cooled, and President Trump and Chairman Kim met at a summit in Singapore in June 2018.<sup>103</sup> At the end

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98. President Donald J. Trump, Remarks by President Trump to the 72nd Session of the United Nations General Assembly (Sept. 19, 2017), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-72nd-session-united-nations-general-assembly/>. For a comprehensive analysis of this 2017 missile crisis between the United States and North Korea, see VAN JACKSON, *ON THE BRINK: TRUMP, KIM, AND THE THREAT OF NUCLEAR WAR* (2019).

99. S.C. Res. 2371 (Aug. 5, 2017).

100. S.C. Res. 2375 (Sept. 11, 2017); S.C. Res. 2397 (Dec. 22, 2017).

101. S.C. Res. 2397, ¶ 11 (Dec. 22, 2017).

102. Exec. Order No. 13,810, 82 Fed. Reg. 44,705 (Sept. 20, 2017) (imposing additional sanctions with respect to North Korea). Nonetheless, observers question whether circumvention efforts have reduced the impact of the maritime sanctions against North Korea. *See, e.g.*, Robert Huish, *The Failure of Maritime Sanctions Enforcement against North Korea*, 23 ASIA POLICY 131 (2017); SUK KYOON KIM, *MARITIME DISPUTES IN NORTHEAST ASIA: REGIONAL CHALLENGES AND COOPERATION* ch. 9 (2017).

103. Mark Landler, *The Trump-Kim Summit Was Unprecedented, but the Statement Was Vague*, NEW YORK TIMES (June 12, 2018), <https://www.nytimes.com/2018/06/12/world/asia/north-korea-summit.html>.

of the summit, they issued a joint statement agreeing to pursue complete denuclearization of the Korean peninsula.<sup>104</sup> Both sides heralded the summit as a success, with President Trump publicly claiming that North Korea was “no longer a nuclear threat.”<sup>105</sup> Following the Singapore summit, North Korea refrained from weapons testing through the end of 2018. President Trump and Chairman Kim met again in Hanoi in 2019, but the talks collapsed when the United States would not agree to discuss the immediate suspension of sanctions until North Korea took further steps to verify it was irreversibly abandoning its nuclear weapons.<sup>106</sup> Subsequently, although North Korea resumed its missile testing, in a historic moment President Trump and Chairman Kim met briefly along the DMZ, and President Trump even briefly set foot in North Korean territory.<sup>107</sup> However, this meeting did not put an end to North Korea’s renewed missile testing.<sup>108</sup>

#### IV. CONTEMPORARY COMMERCIAL RESPONSES TO INSURANCE PROHIBITIONS

The substantial financial impact for commercial actors directly targeted by marine insurance prohibitions and sanctions blacklists is readily apparent. These vessels and shipping companies have only a few options to access the insurance that is necessary to engage in maritime trade. They must either replace coverage through domestic providers or sovereign guarantees or otherwise self-insure against all marine risks. In the case of Iran during the height of the multilateral sanctions against IRISL, NITC, and their affiliates,

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104. Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People’s Republic of Korea at the Singapore Summit (June 12, 2018), <https://www.whitehouse.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/>.

105. *Trump Says North Korea ‘No Longer a Nuclear Threat’*, REUTERS, June 13, 2018, <https://www.reuters.com/article/us-northkorea-usa-trump/trump-says-north-korea-no-longer-a-nuclear-threat-idUSKBN1J915T>.

106. Edward Wong, *Trump’s Talks with Kim Jong-un Collapse, and Both Sides Point Fingers*, NEW YORK TIMES (Feb. 28, 2019), <https://www.nytimes.com/2019/02/28/world/asia/trump-kim-vietnam-summit.html>.

107. Peter Baker & Michael Crowley, *Trump Steps Into North Korea and Agrees with Kim Jong-un to Resume Talks*, NEW YORK TIMES (June 30, 2019), <https://www.nytimes.com/2019/06/30/world/asia/trump-north-korea-dmz.html>.

108. See, e.g., Choe Sang-Hun, *North Korea Says It Tested New Type of Missile, Further Enhancing Its Arsenal*, NEW YORK TIMES (Aug. 11, 2019), <https://www.nytimes.com/2019/08/11/world/asia/north-korea-missile-test.html>.

Iranian vessels attempted to acquire coverage through Iran's national government and domestic insurers.<sup>109</sup> This included accessing coverage through entities such as the Iran-based Kish P&I Club, which is not a member of the London-based International Group of P&I Clubs.<sup>110</sup>

Several industry analysts have expressed skepticism that these alternative sources of insurance would be adequate in the case of a major marine casualty.<sup>111</sup> Some analysts have raised concerns that banning insurance for vessels carrying large amounts of oil as cargo and fuel places too much risk on the marine environment.<sup>112</sup> This view contends that it is unclear whether a sovereign liability fund, particularly those administered by a cash-strapped Iran, would be able to pay out claims in the case of a large oil spill. Observers have also underscored that limiting P&I access may place seafarers or other third parties at greater risk of being unable to recover for injuries suffered while performing work on vessels.<sup>113</sup> Even if a domestic insurer or sovereign guarantee could offer adequate assurance for such liabilities, it is unclear how

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109. *Iran Offers to Insure Foreign Ships to Skirt EU Ban*, REUTERS, July 17, 2012, <https://www.reuters.com/article/us-iran-shipping/iran-offers-to-insure-foreign-ships-to-skirt-eu-ban-idUSBRE86G0XX20120717>; Max Tingyao Lin, *Japan Club Emphasizes Partial Exposure to EU Sanctions*, LLOYD'S LIST: MARITIME INTELLIGENCE (Feb. 23, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL030675/Japan-Club-emphasises-partial-exposure-to-EU-sanctions>.

110. Other jurisdictions with particular dependence on Iranian oil, such as Japan, South Korea, and India, also offered sovereign guarantees for domestic importers of Iranian oil in conjunction with waivers to the sanctions issued by the United States and European Union. See David Black, *Japan to Insure Oil Shipments*, THE NATIONAL (June 15, 2012), <https://www.thenational.ae/business/japan-to-insure-iran-oil-shipments-1.406128>; Yuka Obayashi & Bozorgmehr Sharafedin, *Japanese Refiners Load First Iran Oil Cargo since U.S. Sanctions*, REUTERS, Jan. 21, 2019, <https://www.reuters.com/article/us-iran-oil-japan/japanese-refiners-load-first-iran-oil-cargo-since-u-s-sanctions-idUSKCN1PF0EH>.

111. See, e.g., Liz McMahon, *Insurers Question Whether Asian Players Can Plug Sanctions Gap*, LLOYD'S LIST: MARITIME INTELLIGENCE (Feb. 10, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL030314/Insurers-question-whether-Asian-players-can-plug-sanctions-gap>.

112. Luke Hunt, *Maritime Disaster Waiting to Happen*, THE DIPLOMAT (Aug. 22, 2011), <https://thediplomat.com/2011/08/maritime-disaster-waiting-to-happen/>.

113. Mark Fuechec, *International Sanctions Could Leave Lawful Vessels at Risk*, LLOYD'S LIST: MARITIME INTELLIGENCE (Oct. 4, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1124475/International-sanctions-could-leave-lawful-vessels-at-risk>; see also Liz McMahon, *Policing Sanctions Through Insurance Will Hurt Third Parties*, LLOYD'S LIST: MARITIME INTELLIGENCE (June 29, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL034032/Policing-sanctions-through-insurance-will-hurt-third-parties>; Liz McMahon, *U.S. Sanctions 'Unreasonable and Unsubstantiated', Says Kish P&I*, LLOYD'S LIST:

these claims would be paid given the restrictions on access to the global financial infrastructure.<sup>114</sup>

Some have also responded to the use of marine insurance prohibitions as geopolitical tools with frustration.<sup>115</sup> One Lloyd's List editorial even described the lost revenue due to the Iran sanctions as "a disguised form of expropriation."<sup>116</sup> Such reactions echo the free-trade voices opposing insurance bans in the eighteenth century.<sup>117</sup> Insurers have also lamented that the prohibitions disproportionately target the insurance industry in contrast to the more narrow import and export restrictions affecting other sectors.<sup>118</sup> They note that these broad prohibitions unfairly utilize insurance providers' compliance initiatives to police the sanctions, while also driving a market for less secure insurance arrangements that are more likely to put third parties at risk.<sup>119</sup> They argue that targeted actors will continue to trade regardless of the sanctions, albeit with less reputable insurance, thereby placing the compliance burden on port States to examine any unorthodox insurance coverage on vessels attempting to enter their ports.<sup>120</sup>

Amidst all of this controversy, insurers have responded to the risks of harsh sanctions penalties by enhancing compliance initiatives.<sup>121</sup> This "know your customer" approach has become an entrenched aspect of commercial practice in the banking and finance sectors in recent decades, but it is less

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MARITIME INTELLIGENCE (Mar. 18, 2013), <https://lloydslist.maritimeintelligence.informa.com/LL039557/US-sanctions-unreasonable-and-unsubstantiated-says-Kish-PampI>.

114. Liz McMahon, *Sovereign Liability Cover Rejected as Answer to Iran Sanctions*, LLOYD'S LIST: MARITIME INTELLIGENCE (Apr. 11, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL031951/Sovereign-liability-cover-rejected-as-answer-to-Iran-sanctions>.

115. David Osler, *Sanctions on Shipping: Failing since 432 BCE*, LLOYD'S LIST: MARITIME INTELLIGENCE (Dec. 7, 2017), <https://lloydslist.maritimeintelligence.informa.com/LL1120409/Sanctions-on-shipping-Failing-since-432-BCE>.

116. *Id.*

117. *See supra* Part II.

118. Patrick Hagen, *EU Sanctions on Iran Hurt Insurers*, LLOYD'S LIST: MARITIME INTELLIGENCE (Oct. 7, 2011), <https://lloydslist.maritimeintelligence.informa.com/LL026793/EU-sanctions-on-Iran-hurt-insurers>.

119. Liz McMahon, *North P&I Slams 'Deeply Flawed' EU Sanctions*, LLOYD'S LIST: MARITIME INTELLIGENCE (Sept. 4, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL035661/North-PampI-slams-deeply-flawed-EU-sanctions>.

120. Liz McMahon, *IG Airs Sanctions Fears*, LLOYD'S LIST: MARITIME INTELLIGENCE (Apr. 18, 2012), <https://lloydslist.maritimeintelligence.informa.com/LL032138/IG-air-sanctions-fears>.

121. *See* CLYDE & CO, SANCTIONS UPDATE: TRADE SANCTIONS – CLYDE & CO SEMINAR TESTS MARKET IMPACT (2012), [https://www.clydeco.com/uploads/Files/Publications/2012/CC001134\\_SanctionsUpdate\\_Trade\\_Sanctions\\_Seminar\\_03.05.12.pdf](https://www.clydeco.com/uploads/Files/Publications/2012/CC001134_SanctionsUpdate_Trade_Sanctions_Seminar_03.05.12.pdf).



familiar in the marine insurance market.<sup>122</sup> Scholars and industry observers have recently pointed out how sanction compliance in the maritime sector can affect ancillary services, not only for insurers, but also for entities such as freight forwarders, logistics providers, shipbrokers, and bunker service companies.<sup>123</sup> Sanctions may require these entities to engage in more thorough vessel vetting, cargo checking, Automatic Identification System (AIS) data tracking, and other due diligence safeguards to ensure their customers are not disguising illicit transactions as legitimate trade.

Since sanctions evolve rapidly in response to pressing geopolitical developments, compliance questions are often left unanswered. For instance, after the EU oil embargo was placed on Iran in 2012, it was not immediately clear whether the ban included bunker oil along with cargo oil.<sup>124</sup> These uncertainties can result in overcompliance with sanctions reaching further and lasting longer than policymakers intend.<sup>125</sup> Overcompliance can also create a chilling effect, where financial entities simply chose not to do business in challenging

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122. Andy Wragg, *Lloyd's International Sanctions Guidance: Compliance, Delegated Authorities and Claims*, LLOYD'S MARKET BULLETIN (REF: Y4861) (Jan. 12, 2015), <https://www.lloyds.com/~media/files/the-market/communications/market-bulletins/2015/01/y4861.pdf>.

123. Sentiments like these are expressed in a letter sent by the Australian and Singaporean U.N. representatives to the Security Council that summarized the findings of an academic conference held in Singapore titled "Managing Sanctions Risk in the Maritime and Transportation Sector." See Permanent Reps. of Australia and Singapore to the U.N., Letter dated January 15, 2015 from the Permanent Reps. of Australia and Singapore to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2015/28 (Jan. 16, 2015); see also Will Waters, *U.S. Sanctions Squeeze Iranian Logistics Sector*, LLOYD'S LIST: MARITIME INTELLIGENCE (Aug. 10, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1123816/US-sanctions-squeeze-Iranian-logistics-sector>; Stuart Todd, *Iran Trade Implications Unclear, Say Forwarders*, LLOYD'S LIST: MARITIME INTELLIGENCE (May 15, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1122612/Iran-trade-implications-unclear-say-forwarders>.

124. Industry participants raised a number of similar compliance concerns at a 2013 conference on sanctions and the insurance industry held in London. See Matthew Moran & Daniel Salisbury, *Sanctions and the Insurance Industry: Challenges and Opportunities* (King's College London Centre for Science and Security Studies (CSSS), Occasional Papers 2/2013, 2013), <https://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/pubs/insurance-report.pdf>.

125. See Mike Salthouse, *Legacy of the Iran Sanctions Programme for the Shipping Industry*, MARITIME RISK INTERNATIONAL (Mar. 16, 2017), <https://www.maritime-risk-intl.com/international/middle-east-and-gulf/legacy-of-the-iran-sanctions-programme-for-the-shipping-industry-122999.htm>.

environments because the risk of sanctions violations outweighs the commercial reward. Such decisions create negative consequences for citizens living in targeted states, while also frustrating humanitarian and development efforts.<sup>126</sup> Commercially, even those insurers covering authorized cargo have questioned whether they could legally pay out claims if a marine casualty occurred off the coasts of a sanctioned State.<sup>127</sup> In addition, although import and export restrictions generally omit food and medicine, some analysts argue that broad insurance bans resulting in overcompliance could make it more difficult to provide these goods.<sup>128</sup>

To address the risk of a customer becoming subject to sanctions during an insurance policy period, insurers have begun updating insurance contracts with “sanctions clauses.”<sup>129</sup> Designed to exclude coverage of prohibited transactions, these clauses provide a right of early termination in the case of sanctions risk. Several model clauses have been promulgated by industry organizations, including the Lloyd’s Market Association, which published a model clause for hull and machinery policies called the LMA 3100 clause.<sup>130</sup> This clause allows the insurer or reinsurer to avoid liability to pay claims under the policy if it “would expose” the insurer to “any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.”<sup>131</sup> Similar clauses have been recommended for cargo policies, and various P&I clubs have updated their rules to include

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126. See Christy Lee, *Humanitarian Groups Say Sanctions Impede Aid to North Koreans*, VOICE OF AMERICA (Mar. 26, 2019), <https://www.voanews.com/east-asia-pacific/humanitarian-groups-say-sanctions-impede-aid-north-koreans>.

127. Liz McMahon, *Sanctions Leave Marine Insurers in the Dark*, LLOYD’S LIST: MARITIME INTELLIGENCE (Dec. 2, 2011), <https://lloydslist.maritimeintelligence.informa.com/LL028423/Sanctions-leave-marine-insurers-in-the-dark>.

128. Julian Macqueen, *Marine Insurers Feel Bite of Iranian Sanctions*, LLOYD’S LIST: MARITIME INTELLIGENCE (Mar. 29, 2011), <https://lloydslist.maritimeintelligence.informa.com/LL008991/Marine-insurers-feel-bite-of-Iranian-sanctions>.

129. Andy Wragg, *Lloyd’s Sanctions Guidance – Sanctions Clauses*, LLOYD’S MARKET BULLETIN (REF: Y4916), (July 17, 2015), <https://www.lloyds.com/~media/files/the-market/communications/market-bulletins/2015/07/y4916.pdf>.

130. *Id.*

131. *Id.* at 2 n.3.

similar language.<sup>132</sup> These sanctions clauses mirror those that have been included in recent updates to other contracts used in international commercial transactions, including charter parties, bills of lading, and letters of credit.<sup>133</sup>

English courts have recently ruled on cases addressing sanctions risk and marine insurance in the Iran context. Among the issues raised by these cases is whether an insurer has the right to terminate an insurance policy during a policy period on the grounds of illegality and frustration after an insurance prohibition is announced.<sup>134</sup> Cases have also addressed the efficacy of various sanctions clauses, including the LMA 3100 clause, in providing the insurer with the right to terminate coverage after an assessment of sanctions risk.<sup>135</sup> The results have varied depending on the language of the sanctions clause, which has proved instructive in identifying the suitable language for insurers to include in their insurance policies.<sup>136</sup>

The present sanctions disharmony between the United States and the European Union on the Iran issue has also caused commercial controversy.<sup>137</sup> The United States continues to ban insurance coverage and other material support for transactions with an Iran nexus and has threatened sanc-

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132. See, e.g., *Sanctions*, UK P&I CLUB, <https://www.ukpandi.com/about-us/corporate-governance/compliance-regulatory/sanctions/> (last visited Aug. 29, 2019).

133. See, e.g., *Sanctions Clause for Time Charter Parties*, BIMCO: CONTRACTS AND CLAUSES, [https://www.bimco.org/contracts-and-clauses/bimco-clauses/sanctions\\_clause\\_for\\_time\\_charter\\_parties\\_2010](https://www.bimco.org/contracts-and-clauses/bimco-clauses/sanctions_clause_for_time_charter_parties_2010) (last visited Aug. 29, 2019).

134. See, e.g., *Arash Shipping v. Groupama* [2011] EWCA (Civ) 620 (Eng.).

135. See, e.g., *Islamic Republic of Iran Shipping Lines v. Steamship Mutual Underwriting Association (Bermuda) Ltd.* [2010] EWHC (Comm) 2661 (Eng.); *Mamancochet Mining Ltd v. Aegis Managing Agency Ltd.* [2018] EWHC (Comm) 2643 (Eng.).

136. See Nigel Brook, Mike Roderick & Henrietta Wells, *Breach or No Breach*, MARITIME RISK INTERNATIONAL (Nov. 1, 2012), <https://www.maritime-risk-intl.com/legal-and-regulatory/breach-or-no-breach-65355.htm>.

137. See Jack Ewing & Stanley Reed, *European Companies Rushed to Invest in Iran. What Now?*, NEW YORK TIMES (May 9, 2018), <https://www.nytimes.com/2018/05/09/business/iran-nuclear-trump-business-europe.html>; Max Tingyao Lin, *Political Forces Curb Tanker Trades with Iran Again*, LLOYD'S LIST: MARITIME INTELLIGENCE (June 14, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1123028/Political-forces-curb-tanker-trades-with-iran-again>; Costas Paris & Joanne Chiu, *U.S. Sanctions Start to Pinch Shipping in Iran*, WALL STREET JOURNAL (May 29, 2018), <https://www.wsj.com/articles/u-s-sanctions-start-to-pinch-shipping-in-iran-1527586200>; *European Operators Begin to Pull Back From Iran*, MARITIME EXECUTIVE (May 14, 2018), <https://www.maritime-executive.com/article/european-operators-begin-to-pull-back-from-iran>; *Industry Majors Put Their Iranian Businesses Under Review*, WORLD MARITIME NEWS (May 14, 2018), <https://worldmaritimeneews.com/archives/252710/industry-majors-put-their-iranian-businesses-under-review/>.

tions enforcement against international insurers and financial service providers.<sup>138</sup> Simultaneously, the European Union has attempted to preserve the JCPOA through countermeasures such as its Blocking Regulation. These divergent legal approaches have led to uncertainty in the insurance sector over whether coverage is permitted or prohibited.<sup>139</sup> Compounding the challenges raised by this inconsistency is the fact that the electronic platform used in Lloyd's of London is partly owned by a U.S. firm.<sup>140</sup> Although the United Kingdom and the rest of the European Union have rolled back sanctions on Iran and permitted insurers to cover Iranian vessels and cargo under the JCPOA framework, the integration of the Lloyd's market infrastructure into the U.S. financial and technology sectors has left insurers second-guessing compliance.<sup>141</sup> At present, it is unclear whether other countermeasures, such as the INSTEX trading mechanism, or other creative solutions, like the use of cryptocurrencies, will provide a way around the U.S. sanctions.<sup>142</sup>

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138. Eric Watkins, *U.S. Warns Shipping Industry over Iran Sanctions Busting*, LLOYD'S LIST: MARITIME INTELLIGENCE (Nov. 21, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1125199/US-warns-shipping-industry-over-Iran-sanctions-busting>; Peter Eavis, *Trump's New Iran Sanctions May Hit Snag with Global Financial Service*, NEW YORK TIMES (Oct. 12, 2018), <https://www.nytimes.com/2018/10/12/business/dealbook/swift-sanctions-iran.html>. In 2013, OFAC brought enforcement action against a member of the International Group of P&I Clubs, which serves as a reminder of the harsh consequences for running afoul of U.S. sanctions. See OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, ENFORCEMENT INFORMATION FOR MAY 9, 2013 (2013), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130509\\_american\\_club.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130509_american_club.pdf) (citing *The American Steamship Owners Mutual Protection and Indemnity Association, Inc. Settles Potential Liability for Apparent Violations of Multiple Sanctions Programs* pursuant to 31 CFR 501.805(d)(1)(i)).

139. David Osler, *Iran 'Blocking Statute' Will Mean Little for Shipping, Experts Warn*, LLOYD'S LIST: MARITIME INTELLIGENCE (Aug. 7, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1123774/Iran-blocking-statute-will-mean-little-for-shipping-experts-warn>.

140. See Carolyn Cohn & Jonathan Saul, *U.S. Sanctions Seen Barring IT Platform of Insurer Lloyd's for Iran Trade*, REUTERS, July 13, 2018, <https://www.reuters.com/article/us-iran-sanctions-insurance-idUSKBN1K31TX>.

141. *Id.*; see also Ron Bousso, Shadia Nasralla & Amanda Cooper, *Insurance Cutback among Reasons Europeans Withdrawing from Iranian Oil Market*, INSURANCE JOURNAL (June 7, 2018), <https://www.insurancejournal.com/news/international/2018/06/07/491622.htm>.

142. See Richard Meade, *Iran Sanctions Bypass Will Have No Impact on Shipping*, LLOYD'S LIST: MARITIME INTELLIGENCE (Sept. 26, 2018), <https://lloydslist.maritimeintelligence.informa.com/LL1124384/Iran-sanctions-bypass-will-have-no-impact-on-shipping> (discussing the trading mechanism designed to bypass U.S. sanctions); see also Thomas Erdbrink, *How Bitcoin Could Help Iran Undermine U.S. Sanctions*, NEW YORK TIMES (Jan. 29, 2019), <https://www.nytimes.com/2019/01/29/world/middleeast/bitcoin-iran-sanctions.html>.

Meanwhile, in the North Korea context, there is still a long way to go before a rollback in sanctions becomes a realistic possibility. Concurrent with diplomatic efforts such as the Hanoi summit and the Trump-Kim meeting in the DMZ, U.S. sanctions have continued to target shipping companies and vessels thought to be involved in North Korea sanctions busting activity.<sup>143</sup> In an unprecedented move, the United States even impounded one of North Korea's largest bulk carriers for engaging in illegal coal trades.<sup>144</sup>

The focus on marine insurance as a sanctions tool has also continued. Concurring with recommendations made by a U.N. Panel of Experts Report, recent U.S. OFAC guidance urged P&I clubs to guard against unwittingly violating sanctions by utilizing "AIS-switch off clauses" in insurance packages for "at-risk" vessels.<sup>145</sup> These clauses are designed to offer the insurer grounds to cancel participation in insurance if a vessel operator deactivates its AIS tracking system—a technique that has been described as a "deceptive maritime practice"—to circumvent sanctions through ship-to-ship transfers

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A recent tit-for-tat of vessel seizures involving both Iran and the United Kingdom has further complicated matters. On July 4, 2019, the United Kingdom seized the tanker, the *Grace I*, off Gibraltar based on intelligence that it was moving oil to Syria in violation of U.N. sanctions. Shortly thereafter, Iran seized the U.K.-flagged vessel, the *Stena Impero*, in the Strait of Hormuz in apparent retaliation. Paired with recent attacks of foreign-flagged vessels off Iran's coasts, and Western proposals to utilize naval escorts of tankers in the region, there are now new challenges to the JCPOA's viability. See David D. Kirkpatrick & Megan Specia, *Iran's Seizure of British Vessel Further Riles Gulf Region*, NEW YORK TIMES (July 19, 2019), <https://www.nytimes.com/2019/07/19/world/middleeast/iran-british-tanker-drone.html>; David D. Kirkpatrick, Richard Perez-Pena & Stanley Reed, *Tankers Are Attacked in Mideast, and U.S. Says Video Shows Iran Was Involved*, NEW YORK TIMES (June 13, 2019), <https://www.nytimes.com/2019/06/13/world/middleeast/oil-tanker-attack-gulf-oman.html>; Steven Erlanger, *Iran Links British Seizure of Oil Tanker to Ailing Nuclear Deal*, NEW YORK TIMES (July 28, 2019), <https://www.nytimes.com/2019/07/28/world/europe/iran-tanker-britain-nuclear.html>.

143 Hyonhee Shin & David Brunnstrom, *North Korea Quits Liaison Office in Setback for South after New U.S. Sanctions*, REUTERS, Mar. 21, 2019, <https://www.reuters.com/article/us-northkorea-usa-sanctions/north-korea-quits-liaison-office-in-setback-for-south-after-new-u-s-sanctions-idUSKCN1R222O>.

144 Eileen Sullivan & Benjamin Weiser, *U.S. Seizes North Korean Ship for Violating Sanctions*, NEW YORK TIMES (May 9, 2019), <https://www.nytimes.com/2019/05/09/us/politics/wise-honest-north-korea-ship-seized.html>.

145. OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, UPDATED GUIDANCE ON ADDRESSING NORTH KOREA'S ILLICIT SHIPPING PRACTICES (2019) (issued Mar. 21, 2019), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk\\_vessel\\_advisory\\_03212019.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_vessel_advisory_03212019.pdf); Note by the President of the Security Council, Enclosure, Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009), U.N. Doc. S/2019/171 (Mar. 5, 2019).

on the high seas.<sup>146</sup> Nevertheless, as high-level diplomatic engagement continues, sanctions may be reduced incrementally if North Korea takes verifiable steps to abandon its nuclear weapons program. As this process unfolds, insurers, along with other maritime businesses, will be ready to evaluate the North Korean market. Learning from the recent Iran experience, they will be sure to guard against the risk of sanctions snapback.<sup>147</sup>

## V. CONCLUSION

The peaceful resolution of international disputes often requires innovative approaches. At present, targeted economic sanctions are used as the primary method of enhancing political pressure without the use of conventional military intervention. International policymakers must examine the nuances of the global economy and select precise pressure points to develop sanctions techniques that effectively transmit the intended coercive force. In recent years, targeted insurance prohibitions have emerged for this purpose with some level of success. When new security challenges arise, such tactics may serve as a model for future policy responses.<sup>148</sup> In considering these measures, policymakers must remain cognizant of their substantial impact on marine insurers and the broader shipping community. Even so, the industry players most directly affected by marine insurance prohibitions will

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146. See David Osler, *U.S. Urges Marine Insurers to Adopt North Korea AIS Switch-off Clauses*, LLOYD'S LIST: MARITIME INTELLIGENCE (Mar. 29, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126857/US-urges-marine-insurers-to-adopt-North-Korea-AIS-switch-off-clauses>; Keith Johnson & Dan De Luce, *Busting North Korea's Sanctions-Evading Fleet*, FOREIGN POLICY (Feb. 28, 2018), <https://foreignpolicy.com/2018/02/28/busting-north-koreas-sanctions-evading-fleet-ofac-treasury-shipping/>.

147. For further discussion of a risk-based mitigation framework for insurance with a potential North Korea nexus, see Chris Po-Ba, *Countering North Korean and Other Sanctions Evasion Tactics*, LLOYD'S MARKET BULLETIN (REF: Y5246), at 3–5 (Apr. 2, 2019), <https://www.lloyds.com/~media/files/the-market/communications/market-bulletins/2019/04/y5246.pdf>.

148. See Eric Watkins, *Trump Administration Ramps Up Pressure Against Venezuela*, LLOYD'S LIST: MARITIME INTELLIGENCE (Mar. 29, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126841/Trump-administration-ramps-up-pressure-against-Venezuela>; Nidda Bakhsh, *Tankers Stalling Amid Uncertainty on PDVSA*, LLOYD'S LIST: MARITIME INTELLIGENCE (Feb. 5, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126136/Tankers-stalling-amid-uncertainty-over-US-sanctions-on-PDVSA>; Mark Fuechec, *American Club Urges Caution Over Venezuela Sanctions*, LLOYD'S LIST: MARITIME INTELLIGENCE (Jan. 29, 2019), <https://lloydslist.maritimeintelligence.informa.com/LL1126054/American-Club-urges-caution-over-Venezuela-sanctions>.

likely agree that while these measures may reduce profits, create compliance challenges, and place third parties at risk, they are still less commercially disruptive—and certainly less ethically distressing—than the outbreak of war.